In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 308

JEFFERSON DAVIS BROADUS AND JOE CURT COLEMAN, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A–4) is reported at 317 F. 2d 212.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 1963. A petition for rehearing was denied on June 27, 1963 (Pet. App. A–6, A–7). The petition for a writ of certiorari was filed on July 25, 1963. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court abused its discretion when, at a hearing on a motion for revocation of probation, it considered evidence as to additional misconduct of the same kind, not alleged in the motion to revoke.

STATEMENT

In the United States District Court for the Eastern District of Texas, an indictment was returned charging petitioner Broadus (under four counts) and petitioner Coleman (under one count) with possessing sugar with intent that it be used in making illegal liquor in violation of 26 U.S.C. 5601(a)(7), 5179(a). Both petitioners were charged under a fifth count with conspiring to defraud the United States of internal revenue taxes and to manufacture liquor in violation of the provisions of the Internal Revenue Code (R. 2–8). Petitioner Broadus, after waiving a jury, was convicted by the court; petitioner Coleman pleaded guilty (R. 18–22). Each petitioner was fined two thousand dollars, and sentenced, on the fifth count, to three years' imprisonment. Execution of the prison sentences was suspended for five years, conditioned on good behavior, and the petitioners were released on probation (R. 18–22).

Sixteen months later, in July, 1962, the probation officer petitioned the court to revoke petitioners' probation on the ground that they had continued to engage in the illegal liquor business (R. 22–24). A hearing was held in September, at which time the probation officer read to the court a second motion which specified in detail the acts of misconduct alleged to constitute violations of probation (Pet. App. A–1, A–2, R. 50–60). Petitioner Broadus, it was alleged, had made a sale of untaxed whiskey to a government agent (R. 50–53); petitioner Coleman, according to the motion, had been arrested in Mississippi for attempting to buy sugar and indicted in Alabama for

illegal sales of whiskey (R. 53–60). Copies of the motions were presented to petitioners (R. 62), who were granted a continuance of eight days to prepare a defense (R. 68). When the proceedings were resumed, the government produced a number of witnesses who testified concerning the sale by Broadus and the acts of Coleman which formed the basis of the charges against him (R. 173–179, 194–199, 208–214, 246–257). The court also heard evidence that petitioners had engaged in the operation of a whiskey still in Mississippi, an act not specifically charged in the motion of the preceding week (R. 111–113, 196–223, 236–239). Later in the proceedings, petitioner Broadus moved to suppress a tape recording of a telephone conversation he had with a government agent (R. 251). Decision on the motion was deferred until after the court had heard all the evidence, at which time it was granted (R. 32, 251). The court found the petitioners guilty of each of the alleged acts of misconduct, as well as participating in the operation of the still, and revoked the probations (Pet. App. A–3, R. 29–34). The court of appeals affirmed (Pet. App. A–4, 317 F. 2d 212).

ARGUMENT

1. The probation officer pleaded and proved that each petitioner violated probation by continuing to engage in the illegal liquor business (R. 22–24, 29–33). Specific acts of misconduct—all of them violations of the federal law—were alleged at the beginning of the hearing and proved to the satisfaction of the court (R. 29–33, 50–69). This proof was more

than sufficient to justify revocation of probation. The fact that there was additional evidence that petitioners had committed still other violations does not affect the validity of the action taken, at least in the present circumstances. Probation proceedings are not confined by the formal requirements applicable to a criminal trial. Moreover, the additional evidence in question related to offenses of the same kind and there can be no question that proof of any one of these offenses would have dictated the outcome.

Petitioner Broadus also contends that it was improper for the court to play a recording of a telephone conversation he had with a government agent, but a motion to suppress this evidence was granted by the court (R. 32). Manifestly, the court did not consider the recording in revoking probation.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1963.